

To: Information Technology Board  
Fr: Chris Mehl, IT Board Member, City of Bozeman Commissioner  
Re: Agenda background, motions for December 13, 2016 meeting  
Dt: December 7, 2016

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At our September meeting, the IT Board discussed community broadband infrastructure and agreed to consider several potential motions/actions at its December meeting. Below are two potential action items for this meeting's agenda.

### **First Topic: Administrative Option**

**Issue:** The Montana Department of Transportation default policy position is to deny longitudinal encroachment permits to all entities that the department is not explicitly required to accommodate by law (i.e. political subdivisions of the State of Montana). This results in delays and costs that jeopardize the installation of broadband by state agencies, counties, cities, or school districts across Montana; as well as limiting commercial benefits from the greater application of broadband in the state.

**Goals:** The Montana Department of Transportation should allow state agencies, cities, counties, and school districts to install broadband conduit expeditiously in state controlled right of way. State right of way represents an essential pathway for critical broadband connections between political subdivisions. Additionally, when excess conduit is installed concurrently in the same trench for a marginal increase in cost, this surplus conduit provides an excellent opportunity for the private sector to reduce the cost of deploying broadband, while facilitating competitive broadband options in more parts of Montana.

**Background, Part One:** The majority of Bozeman's business corridors—and similar corridors for most Montana towns and cities—are controlled by the Montana Department of Transportation (MDT). After months of review, the City discovered that MDT disallowed longitudinal encroachment in the public right of way, causing delays and expense that jeopardized the project. MDT's refusal to allow longitudinal encroachment caused similar problems for a project connecting schools in Missoula County. Similar delays or costs for other Montana agencies/cities/counties/schools in the future could jeopardize broadband projects across the state.

As an example of what other Montana cities, counties, or schools may want to accomplish, the City of Bozeman installed multiple conduits throughout Bozeman for license to the private sector to incentivize the provision of next generation broadband service in key business corridors. In addition to assisting private telecommunications providers, this project installed conduit for providing fiber optic connectivity to several public entities including the City of Bozeman, Gallatin County, and Bozeman Public Schools—providing benefits to all three political subdivisions and residents.

**Background, Part Two:** Encroachment Permits are a Matter of Administrative Discretion

- MDT is required by State Law ([69-3-101 MCA](#) and [ARM 18.7.206](#)) to allow “public utilities” in public right of way.
- MDT can already grant, at its discretion, revocable encroachment permits to entities that do not have explicit authority to encroach in the public right of way.
- The State transportation department’s default position is to deny longitudinal encroachment permits to all entities that the department is not explicitly required to accommodate by law (i.e. political subdivisions of the State of Montana). This approach extends far less consideration to the department’s partners in government--state agencies, cities, counties and school districts--than is afforded to regulated telecommunications companies.
- Many competitive providers of next-generation broadband services are unregulated and so they also cannot gain access to MDT right-of-way, which prompted one provider to start offering telegraph service, a regulated offering that gave the provider access to state right of ways.
- The effect of the transportation department’s policy is that state agencies, cities, counties and schools currently have less ability to use state right of ways to serve citizens, conduct government business, or spur economic development.

**Background, Part Three:** Impacts to both Government and Private Sector

- As the need for government entities to build next generation broadband networks grows, more entities will share these challenges. Conduit systems are about economic development, technological advancement, and providing next generation connectivity to schools, libraries, and local governments.
- Public entities need access to state controlled right of way to connect their facilities. In many cases MDT right of way is the only way to make such a connection in a reasonable manner.
- MDT right of way also serves local businesses along major commercial corridors and community centers across the state. In Bozeman, the lack of easy access to right of way decreased the number of businesses that could be served by private providers using City conduit; the delays also increased costs.
- If public rights of way are functionally unavailable for the provision of broadband infrastructure due to delay, bureaucracy, or obstruction, it will seriously hamper the competitive provision of connectivity in many Montana communities.

**Potential Motion:** The Montana Information Technology Board urges the Governor, Montana Department of Transportation, and other state agencies and departments to promptly take all possible administrative actions to allow political subdivisions of the state to install broadband within government right of way.

**Second Topic: Legislative Option:**

**Potential Motion:** The Montana Information Technology Board urges the Montana Legislature to adopt provisions to accomplish several goals: a) changing the Administrative Rules of the State of Montana to provide authority for longitudinal occupancy of State controlled right of way by broadband conduits installed by political subdivisions of the State; b) to define infrastructure to include broadband and conduit; and c) to enable multi-path conduit and robust dig once policies.